

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014040242501**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Canaccord Genuity, Inc., Respondent
CRD No. 1020

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Canaccord Genuity, Inc. ("Canaccord," the "Firm" or "Respondent"), submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Canaccord has been a member of FINRA since 1946. The Firm's principal place of business is New York, New York. It engages in securities underwriting, research and institutional sales to clients in the U.S. and Canada. The Firm has approximately 250 registered representatives operating out of approximately 16 branch offices.

RELEVANT DISCIPLINARY HISTORY

In December 2012, pursuant to Letter of Acceptance, Waiver and Consent No 2011025431701, FINRA found that, from July 2009 through March 2011, the Firm's research analysts sent pre-publication excerpts of research reports containing facts interspersed with opinions, estimates and other non-factual information to the companies covered by the reports in violation of NASD Rule 2711(c) and FINRA Rule 2010. FINRA also found that the Firm failed to implement supervisory procedures reasonably designed to achieve compliance with rules relating to the issuance of research reports, in violation of NASD Rule 2711(i) and FINRA Rule 2010. Based on these findings, the Firm consented to a censure and a fine of \$100,000.

In April 2011, pursuant to Letter of Acceptance, Waiver and Consent No. 2009016251601, FINRA found that, from at least May 2007 through July 2009, the Firm failed to maintain a supervisory system and written supervisory procedures reasonably designed to achieve compliance with Rule NASD 2711, in violation of NASD Rules 2711(i). FINRA also found that the Firm failed to maintain records of public appearances by analysts showing that required disclosures had been made, in violation of NASD Rule 2711(h)(12). Finally, FINRA found that the Firm's analysts failed to deliver draft research to the Firm's Compliance Department before sending excerpts to subject companies, in violation of NASD Rule 2711(c). Based on these findings, the Firm consented to a censure, a fine of \$22,500 and to an undertaking to review its supervisory procedures concerning its research reports and the supervision of its research analysts.

OVERVIEW

From January 1, 2010 through February 1, 2016 (the "Relevant Period"), Canaccord violated multiple disclosure provisions of FINRA's research analyst conflict of interest rules, NASD Rule 2711 and its successor FINRA Rule 2241.¹ Among other things, the rules foster transparency in research reports by requiring member firms to clearly and prominently provide investors with important information regarding the firms' conflicts of interest.

The Firm violated NASD Rule 2711 by:

- Omitting from certain research reports required conflict of interest disclosures concerning the expectation of receiving or intent to seek compensation for investment banking services from the subject company within the next three months and omitting from certain research reports a research analyst's financial interest in a subject company (Rule 2711(h)(2) and (1));
- Failing to present disclosures in a clear, comprehensive and prominent manner (Rule 2711(h)(10)); and
- Failing to implement written supervisory procedures reasonably designed to ensure compliance with the requirements of Rule 2711 (Rule 2711(i)).

The Firm also violated FINRA Rule 5280 by failing to establish, maintain and enforce policies and procedures reasonably designed to limit the flow of information between the Firm's research and trading department personnel.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 2711 is intended, in part, to provide transparency to investors with respect to conflicts of interest that could impact the objectivity and reliability of research reports. Investment banking relationships between the member and the subject company are among the most concerning conflicts for which the rule requires disclosure.

¹ FINRA Rule 2241 superseded NASD Rule 2711 effective December 24, 2015. For ease of reference, the AWC refers to the provisions of NASD Rule 2711, but each of those has a corresponding provision in Rule 2241 that is substantively the same.

1. Canaccord Omitted from its Research Reports Required Disclosures Related to Compensation for Investment Banking Services over the Subsequent Three Month Period

Under NASD Rule 2711(h)(2)(A)(ii)(c), the Firm is required to disclose in research reports if it “expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months.”²

The Firm failed to comply with this requirement during the Relevant Period. Instead of making the specific disclosures required by the rule, when applicable, the Firm included the following general disclosure in its research reports that included an incorrect timeframe: “Canaccord Genuity or one or more of its affiliated companies intend to seek or expect to receive compensation for Corporate Finance/Investment Banking services from the relevant issuer in the next six months.” This deficiency appeared in 12,013 research reports, or all research reports published by the Firm during the Relevant Period.

Based on the foregoing, Canaccord violated NASD Rule 2711(h)(2)(A), and FINRA Rules 2241(c)(4)(C)(iii) and 2010.

2. Canaccord Omitted from its Research Reports Required Disclosures Related to an Analyst's Financial Interest in a Subject Company

NASD Rule 2711(h)(1)(A) requires member firms to disclose in research reports if the research analyst or a member of the analyst's household has a financial interest in the subject company. The Firm did not comply with this requirement in six reports published over a five month period relating to one analyst's holdings in a subject company. The research analyst was employed by the Firm from July 2, 2013 to January 6, 2014. During this time, the analyst had a personal account in which he held 2000 shares in the subject company.

Based on the foregoing, Canaccord violated NASD Rule 2711(h)(1)(A) and FINRA Rule 2010.

3. Canaccord Failed to Disclose Required Information in a Clear, Comprehensive and Prominent Manner

NASD Rule 2711(h)(10) provides that research disclosures required by NASD Rule 2711(h) “must be clear, comprehensive and prominent.”³

In Notice to Members 04-18, FINRA provided interpretive guidance concerning the clarity of research disclosures, including that member firms may not use conditional or indefinite language in required disclosures, such as “may have a position” or “may make a market” in any of the subject company's securities. Conditional or indefinite language lacks the specificity required by NASD Rule 2711(h). Additionally, research reports may not include disclaimers that contradict or are inconsistent with required disclosures: “For example, it is inconsistent for a research report to disclose that the member makes a market in the specific securities that are the

² FINRA Rule 2241(c)(4)(iii) is substantively the same as NASD Rule 2711(h)(2)(A)(ii)(c).

³ FINRA Rule 2241(c)(6) is substantively the same as NASD Rule 2711(h)(10).

subject of the research report and separately to disclose generally that the member may make a market in some or all of the securities mentioned in the report.”

Notice to Members 04-18 also provides guidance regarding the prominence of research disclosures, including that “[r]eferences on the front page of a research report to where disclosures are located must be separated from the report body’s text, and in larger font size than the body text,” and disclosures that are not required must be clearly separated from required disclosures and labeled accordingly.

During the relevant period, Canaccord failed to make clear, comprehensive and prominent disclosures as required by NASD Rule 2711(h)(10). It was the Firm’s practice to include in the same research report both the disclosures required under NASD Rule 2711(h), as well as certain boilerplate disclaimers that conflicted with the specific disclosures required by NASD Rule 2711(h). In particular, Canaccord included the following boilerplate disclosure in all research reports published during the Relevant Period:

Canaccord Genuity and its affiliated companies may have a Corporate Finance/Investment Banking or other relationship with the company that is the subject of this investment research and may trade in any of the designated investments mentioned herein either for their own account or the accounts of their customers, in good faith or in the normal course of market making.

The disclaimer conflicted with the specific disclosure requirements of NASD Rules 2711(h)(1) and 2711(h)(8). NASD Rule 2711(h)(1), in part, requires a member to disclose if the research analyst or the Firm has a financial interest in the securities of the subject company.⁴ NASD Rule 2711(h)(8) requires a member to disclose if it was making a market in the subject company’s securities at the time of the research report’s publication.⁵ The Firm’s statement in its boilerplate disclaimer that it may have an investment banking relationship with the subject company, and that it may trade in the subject company’s securities “in the normal course of market making,” contradicted the specific disclosure requirements of NASD Rules 2711(h)(1) and 2711(h)(8).

Additionally, the disclaimer appeared in the back of the research report, adjacent to disclosures required by NASD Rule 2711(h), under a header titled “Canaccord Research Disclosures as of [the date].” The disclaimer was not clearly separated from the required disclosures, nor was it appropriately labeled to set it apart. As set forth in Notice to Members 04-18, placing required disclosures in close proximity to disclaimers that are not required by NASD Rule 2711(h) “may cause confusion and detract from their readability.”

Finally, Canaccord included at the bottom of the first page of every research report a reference to “Important Disclosures” in the research report’s appendix. The text of this reference to “Important Disclosures” was in a smaller font size than the body text and thus was not sufficiently prominent as required by Rule NASD 2711(h)(10). This deficiency appeared in all research reports published during the Relevant Period.

⁴ FINRA Rule 2241(c)(4)(A) is substantively the same as NASD Rule 2711(h)(1).

⁵ FINRA Rule 2241(c)(4)(G) is substantively the same as NASD Rule 2711(h)(8).

Based on the foregoing, Canaccord violated NASD Rule 2711(h)(10) and FINRA Rules 2241(c)(6) and 2010.

4. Canaccord Failed to Implement Reasonably Designed Written Supervisory Procedures Concerning its Compliance with NASD Rule 2711

NASD Rule 2711(i) requires member firms to adopt and implement written supervisory procedures reasonably designed to ensure that members comply with the provisions of NASD Rule 2711.⁶ At various times during the Relevant Period, the Firm failed to implement procedures reasonably designed to ensure its compliance with NASD Rule 2711.

First, for the period January 1, 2010 to October 9, 2013, Canaccord did not implement written supervisory procedures to ensure compliance with NASD Rule 2711(b) restrictions on the interaction of research and investment banking personnel. During that time, the Firm's review of electronic communications was limited to a random sampling of all of the Firm's electronic communications. The review did not cover a sufficient amount of communications between research and investment banking personnel to ensure compliance with NASD Rule 2711(b), particularly where the Firm implemented no other measures to monitor or prohibit such communications. The Firm conducted no dedicated review of electronic communications between research analysts and investment banking personnel.

Second, for the period January 1, 2010 to February 1, 2016, Canaccord did not implement written supervisory procedures to ensure compliance with NASD Rule 2711(h)(10) requirements concerning the prominence of research disclosures. Although the Firm's written supervisory procedures required the disclosure reference font size be larger than the body text of the research report, the Firm failed to implement those procedures.

Third, from January 1, 2010 to February 1, 2016, Canaccord did not implement written supervisory procedures to ensure compliance with NASD Rule 2711(h) disclosure requirements. Although the Firm's written supervisory procedures required the applicable disclosures in its research reports, the Firm failed to do so.

Based on the foregoing, Canaccord violated NASD Rules 2711(i) and FINRA Rules 3110(b) and 2010.

5. Canaccord Failed to Implement Reasonably Designed Written Supervisory Procedures to Prohibit Trading Ahead of Research Reports

FINRA Rule 5280 requires that a member establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the flow of information between research department and trading department personnel.

⁶ FINRA Rule 2241 does not include a provision corresponding to NASD Rule 2711(i) because FINRA Rule 3110(b) already requires member firms to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable FINRA rules.

From January 1, 2010 to October 9, 2013, Canaccord failed to comply with these supervisory requirements. The Firm's written policies and procedures did not contain provisions addressing the requirements of FINRA Rule 5280 and, in practice, the Firm did not have appropriate controls to restrict the flow of information between its research and trading department personnel.

Based on the foregoing, Canaccord violated FINRA Rules 5280 and 2010.

B. Canaccord also consents to the imposition of the following sanctions:

1. Censure; and
2. Fine in the amount of \$200,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement

that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

5/18/16

Date (mm/dd/yyyy)

JEFFREY G. BARLOW

Respondent

Canaccord Genuity Inc.

By: Jeffrey G. Barlow

Reviewed by:

Andrew F. Viles, Esq.

Senior Managing Director, General Counsel
Canaccord Genuity Inc.
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Accepted by FINRA:

5/24/16
Date

Signed on behalf of the
Director of ODA, by delegated authority

James E. Day

Vice President & Chief Counsel
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